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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re

GIRARDI KEESE,

Debtor.

Case No. 2:20-bk-21022-BR

Chapter 7

**OPPOSITION TO MOTION FOR
RECONSIDERATION OF ORDER
GRANTING CHAPTER 7 TRUSTEE'S
APPLICATION TO EMPLOY THE LAW
OFFICES OF RONALD RICHARDS &
ASSOCIATES, A.P.C. AS SPECIAL
LITIGATION COUNSEL;
DECLARATIONS OF ELISSA D. MILLER
AND RONALD RICHARDS IN SUPPORT**

**[Evidentiary Objections to Declaration
of Evan C. Borges Concurrently Filed]**

Date: To be determined
Time: To be determined
Ctrm.: 1668
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1 **TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE:**

2 Elissa D. Miller, the chapter 7 trustee (the "Trustee") for the bankruptcy estate (the
3 "Estate") of Girardi Keese (the "Debtor"), submits this Opposition to Erika Girardi's
4 ("Erika") *Motion for Reconsideration of Order Granting Chapter 7 Trustee's Application to*
5 *Employ the Law Offices of Ronald Richards & Associates, A.P.C. as Special Litigation*
6 *Counsel* [Docket No. 437] (the "Motion"). For the reasons set forth below, the Court
7 should deny the Motion without a hearing.

8
9 **I. INTRODUCTION**

10 Erika's Motion should be denied. The Trustee previously filed the *Chapter 7*
11 *Trustee's Application to Employ the Law Offices of Ronald Richards & Associates, A.P.C.*
12 *as Special Litigation Counsel* [Docket No. 318] (the "Application"). Although Erika
13 opposed the Application, the Court ultimately entered an order authorizing the Law
14 Offices of Ronald Richards & Associates, A.P.C. (the "Richards Firm") to represent the
15 Trustee as special litigation counsel. Upon appointment as special litigation counsel, the
16 Richards Firm quickly moved to investigate the Estate's claims against Erika, filing a
17 series of motions for examinations under Federal Rule of Bankruptcy Procedure
18 ("FRBP") 2004. With these motions granted, examinations are currently pending and
19 scheduled to take place within the coming week. The Richards Firm, on behalf of the
20 Trustee and the Estate, also filed a complaint against Erika and several related entities
21 for: (1) declaratory relief; (2) turnover of property of the Estate pursuant to 11 U.S.C. §
22 542; (3) avoidance and recovery of fraudulent transfer; (4) conversion; (5) constructive
23 trust; (6) account stated; (7) open book account; (8) money had and received; (9) unjust
24 enrichment; and (10) accounting (the "Complaint")

25 Faced with an impending investigation and the Complaint, Erika now brings the
26 Motion to thwart the Trustee's efforts to investigate and pursue her and undermine the
27 Trustee's right to choose counsel. Erika's expressed willingness to cooperate with the
28

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1 Trustee is nothing more than empty words. Her actions speak far louder.¹ Erika is well
2 aware of the Motion's effects if granted. If the Court grants the Motion, the Trustee will be
3 left without special litigation counsel to investigate and pursue claims against Erika, and
4 the Trustee's investigation and pursuit of claims will effectively cease until the Trustee
5 finds qualified counsel to replace the Richards Firm. Not only will the Estate have to
6 incur additional expenses in seeking approval of new special litigation counsel, the
7 investigation and pursuit of claims will be temporarily stalled and new counsel will need to
8 spend additional time to become familiar with the facts. The delay may negatively impact
9 the Trustee's investigation and pursuit of claims, and there is no reason for the Trustee to
10 suffer this prejudice caused by an unnecessary delay.

11 More importantly, there are no legal grounds to grant the Motion. Despite her
12 extraordinary request, Erika makes no serious attempt to abide by the standard
13 governing motions under Federal Rule of Civil Procedure ("FRCP" or "Rule") 59(e).
14 Rather than follow the correct standard under Rule 59(e), Erika relies on inadmissible
15 evidence and purported violations of Cal. Bus. & Prof. Code § 6068 and Rule 3.6 of the
16 California Rules of Professional Conduct. No such violations have occurred. Moreover,
17 the issue of the alleged violations has *no* bearing on whether the Motion can be granted.
18 Erika is not free to pick and choose whichever standard she prefers. Ninth Circuit
19 precedent binds this Court, not Erika's whim.

20 In sum, there is no basis to grant the Motion. The Richards Firm has fully
21 complied with FRBP 2014. Erika has not highlighted any other proper grounds for
22 reconsideration under Rule 59(e). In fact, Erika makes no argument at all that there is an
23 actual conflict that precludes the Richards Firm from serving as special litigation counsel;
24 she merely repackages prior arguments this Court previously rejected. Furthermore,
25 Erika has no standing to even bring the Motion. The Trustee's investigation and pursuit
26

27 ¹ As discussed in more detail later, Erika has since filed a series of oppositions interfering with the
28 Trustee's administration of the Estate. She has also attempted to disrupt the investigation of claims by
special litigation counsel in Thomas Girardi's individual case by filing a late opposition.

1 of claims against Erika must continue without further disruption and interference.
2 Accordingly, the Court should deny the Motion without a hearing.

3
4 **II. FACTUAL BACKGROUND**

5 **A. The Application and Hearing on the Application**

6 On April 26, 2021, the Trustee filed the Application seeking to retain the Richards
7 Firm as special litigation counsel pursuant to 11 U.S.C. §§ 327(c) and (e) to investigate
8 and pursue potential claims against Erika and any of her related entities. On May 10,
9 2021, Erika filed an opposition to the Application [Docket No. 333]. On June 1, 2021, the
10 Trustee filed a reply to Erika's opposition [Docket No. 374].

11 On June 8, 2021, the Court held a hearing on the Application. A transcript of the
12 hearing is attached here as Ex. "1." At the hearing, Erika requested that the Court issue
13 a gag order against Ronald Richards ("Richards") of the Richards Firm because of
14 certain out of court statements. However, the Court made clear that it would not issue
15 any gag order against Richards in the following exchange:

16 The Court: I'm not going to issue any gag order. I don't even know if I have
17 the power to do that at all...I'm not going to—I can't and would not stop him
from exercising his First Amendment Rights. So I'll leave it at that.

18 Mr. Mastan: Okay. Fair enough...

19 See June 8, 2021 Transcript at 6:8-15, Ex. "1."

20 Ultimately, the Court granted the Application and stated, "I am satisfied that there
21 is no – there is no conflict...I will approve the application..." See June 8, 2021 Transcript
22 at 38:14-23, Ex. "1." On June 10, 2021, the Court entered an order granting the
23 Trustee's Application based on the Richards Firm's representation that it would not
24 pursue any claims (on behalf of its creditor clients) against Erika involving any transfers
25 from the Debtor to Erika. See Order, Ex. "2."

26 **B. The Trustee's Ongoing Investigation and the Complaint**

27 Since the Court granted the Application, the Richards Firm has started conducting
28 its investigation of potential claims that may exist against Erika and filed several motions

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1 for examinations under FRBP 2004 on behalf of the Trustee. On June 18, 2021, the
2 Trustee filed a *Motion for Order Requiring Examination and Production of Documents by*
3 *Benjamin Khakshour Pursuant to Rule 2004 of the Federal Rules of Bankruptcy*
4 *Procedure* [Docket No. 409]. On June 22, 2021, the Trustee filed a *Motion for Order*
5 *Requiring Examination and Production of Documents by Harris Ginsburg LLP and Larry*
6 *A. Ginsburg Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure*
7 [Docket No. 423]. On June 23, 2021, the Trustee filed a *Motion for Order Requiring*
8 *Examination and Production of Documents by Ullman Accountancy Corp. and Michael J.*
9 *Ullman Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure* [Docket No.
10 427] (these motions collectively, the "2004 Motions").

11 The 2004 Motions are directed at Erika's landlord, Erika's family law counsel, and
12 Erika's business manager. On June 28, 2021, the Court entered orders granting the
13 2004 Motions, ordering the parties to produce certain documents as well as appear at
14 their respective examinations on July 22, 2021 and July 23, 2021. See Orders at Docket
15 Nos. 440, 441, and 443.

16 On July 14, 2021, the Richards Firm filed the Complaint on behalf of the Trustee
17 and the Estate.

18 **C. Erika's Recent Efforts to Interfere with the Trustee's Case**
19 **Administration**

20 The Trustee is ceaselessly working to protect the former clients of the Debtor and
21 ensure that they have qualified counsel representing their interests. In order to protect
22 the Debtor's clients, the Trustee has continued to file motions to transition their cases to
23 competent counsel. Prior to the Court granting the Application, Erika did not oppose any
24 of the Trustee's motions to transition cases.

25 On June 9, 2021, the Trustee filed a *Motion for Order Authorizing the Transition of*
26 *the Estate's Interest in the NFL Concussion Litigation to Goldberg Persky White P.C.*
27 *Free and Clear of Liens, Claims and Interests Pursuant to 11 U.S.C. § 363* [Docket No.
28 389] (the "Motion to Transition NFL Concussion Litigation"). On June 23, 2021, the

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1 Trustee filed a *Motion for Order Authorizing the Transition and Assignment of the Estate's*
2 *Interests in the Mesh Litigation to Nadrich & Cohen LLP and the Oshman Firm, LLC, Free*
3 *and Clear of Liens, Claims and Interests Pursuant to 11 U.S.C. § 363* [Docket No. 428]
4 (the "Motion to Transition the Mesh Litigation").

5 After the Court granted the Application, Erika proceeded to file several oppositions
6 to the Trustee's motions to transition cases. On June 28, 2021, Erika filed an objection to
7 the Motion to Transition NFL Concussion Litigation. On July 7, 2021, Erika filed an
8 objection to the Motion to Transition the Mesh Litigation [Docket No. 481].² Both motions
9 have been set for hearing on August 10, 2021, at 2:00 p.m.

10
11 **III. LEGAL ARGUMENT**

12 "[R]econsideration of an order in a bankruptcy case may be sought under either
13 Rules 9023 or 9024, which incorporate Fed. R. Civ. P. 59(e) and 60(b) respectively."
14 *Eisen v. Golden (In re Eisen)*, 2007 WL 7532273 at *2 (B.A.P. 9th Cir. 2007).

15 Reconsideration is an "extraordinary remedy, to be used sparingly in the interests
16 of finality and conservation of judicial resources." *Carroll v. Nakatani*, 342 F.3d 934, 945
17 (9th Cir. 2003) (internal citation omitted). "Indeed, 'a motion for reconsideration should
18 not be granted, absently highly unusual circumstances, unless the district court is
19 presented with newly discovered evidence, committed clear error, or if there is an
20 intervening change in the controlling law." *Id. citing Kona Enters., Inc. v. Estate of*
21 *Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). "A Rule 59(e) motion may *not* be used to
22 raise arguments or present evidence for the first time when they could reasonably have
23 been raised earlier in the litigation." *Kona Enters., Inc.*, 229 F.3d at 890 (emphasis in
24 original).

25
26
27 ² On July 5, 2021, the day before the scheduled hearing, Erika filed a late Opposition to the Motion
28 to Approve Stipulation Between Jason M. Rund (Chapter 7 Trustee) and Secured Creditors Joseph
Ruigomez, Jaime Ruigomez, and Kathleen Ruigomez for Relief from the Automatic Stay Under 11 U.S.C.
§ 362 [Docket No. 236] in Thomas Girardi's individual case.

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1 A motion for reconsideration may also not be used to "rehash the same arguments
2 made the first time or simply express an opinion that the court was wrong." *In re Greco*,
3 113 B.R. 658, 664 (D. Haw. 1990), aff'd and remanded sub nom., *Greco v. Troy Corp.*,
4 952 F.2d 406 (9th Cir. 1991); see also *In re Mannie*, 299 B.R. 603, 608 (Bankr. N.D. Cal.
5 2003) ("A motion to reconsider should not be used 'to ask the court to "rethink what the
6 court had already thought through—rightly or wrongly"—or to reiterate arguments
7 previously raised.'") (internal citation omitted).

8 **A. Erika Has No Standing to Seek Reconsideration of the Order Granting**
9 **the Application**

10 Erika lacks standing to bring the Motion. She is a litigation defendant – nothing
11 more. "A party's standing in a bankruptcy case is governed by the 'person aggrieved'
12 standard. A 'person aggrieved' is one whose pecuniary interests are directly adversary
13 affected." *Sheen v. Diamond (In re Am. Comput. & Dig. Components, Inc.)*, 2005 WL
14 6960172 at *3 (B.A.P. 9th Cir. May 12, 2005); see also *In re Autosport Int'l, Inc.*, 2013 WL
15 3199826 at *3-4 (Bankr. C.D. Cal. June 24, 2013) (determining that opposition
16 documents to motion could not be considered because the party lacked standing).

17 Erika has not made any showing of how she is a person aggrieved with standing.
18 Here, Erika has not filed a proof of claim, nor has she ever claimed to be a creditor of the
19 Estate. In short, the Motion fails to highlight any pecuniary interest of Erika's that would
20 be adversely affected by an order granting the Application. There are none. To the
21 extent Erika asserts that she has a community property interest in Thomas Girardi's
22 equity interest in the Debtor, her alleged community property interest is property of the
23 Thomas Girardi bankruptcy estate controlled by its trustee, Jason Rund, not the Debtor.

24 Erika cannot establish standing simply because she is a defendant in a fraudulent
25 transfer action. Courts have routinely held that status as a defendant in a fraudulent
26 transfer case does not confer standing. See, e.g. *Abbott v. Daff (In re Abbott)*, 183 B.R.
27 198 (B.A.P. 9th Cir. 1995) (holding that the debtor's wife did not have standing as a
28 potential defendant to appeal the order reopening case so that trustee could pursue

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1 fraudulent transfer claims against her); *Wigley v. Wigley (In re Wigley)*, 886 F.3d 681, 685
2 (8th Cir. 2018) (holding that debtor's wife did not have standing to appeal bankruptcy
3 court's order granting the creditor relief from stay to prosecute fraudulent transfer action
4 against her).

5 The Ninth Circuit's decision in *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d
6 441 (9th Cir. 1983) mirrors the facts here. In *Fondiller*, the chapter 7 trustee employed
7 special litigation counsel to investigate and pursue fraudulent transfer claims against a
8 debtor and his wife, a non-debtor. The bankruptcy court approved the employment of
9 special litigation counsel, and the BAP affirmed. Subsequently, the wife appealed the
10 order, and the Ninth Circuit affirmed the BAP. In its holding, the Ninth Circuit noted that
11 the wife's only "demonstrable interest" was as a "potential party defendant in an
12 adversary proceeding[.]" *Id.* at 443. Thus, because the "order did not diminish her
13 property, increase her burdens, or detrimentally affect her rights," the wife lacked
14 standing to appeal the order. Similarly, the order granting the Application has no direct
15 impact on Erika. The order itself does not diminish her property, increase any burdens,
16 or detrimentally affect any rights. Indeed, Erika raises none of these arguments in her
17 opposition.

18 In sum, Erika, is a mere defendant and does not have standing to seek
19 reconsideration of the order granting the Application. The Court should disregard the
20 Motion on this basis alone. Nonetheless, as set forth below, Erika's Motion also fails on
21 the merits and provides no grounds for reconsideration.

22 **B. There are No Grounds Under Rule 59(e) to Grant the Motion**

23 **1. Erika's Motion is Premised on Incorrect Standards**

24 Erika ignores the clear standard for reconsideration under Rule 59(e). Under Rule
25 59(e), grounds for reconsideration of the Application must be *solely* based on: (1) newly
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1 discovered evidence,³ (2) clear error by the court; or (3) an intervening change in
2 controlling law.⁴ See *Carroll*, 342 F.3d at 945 (9th Cir. 2003). Here, the Court must
3 consider whether the new "evidence" from Erika establishes whether there was an actual
4 conflict under sections 327(c) and (e) that requires reconsideration of the order granting
5 the Application.

6 Erika does not argue that the Court made a clear error in granting the Application,
7 nor does Erika highlight any intervening change in controlling law. Instead, Erika devotes
8 the majority of the Motion to arguing whether there are purported violations of Cal. Bus. &
9 Prof. Code § 6068 and Rule 3.6 of the California Rules of Professional Conduct.⁵ These
10 grounds are irrelevant and cannot be considered in the context of a motion for
11 reconsideration. See *White v. N.H. Dep't of Emp't Sec.*, 455 U.S. 445, 450 (1982)
12 ("[F]ederal courts generally have invoked Rule 59(e) *only* to support reconsideration of
13 matters properly encompassed in a decision on the merits.") (emphasis added).
14 "Evidence" of purported violations of Cal. Bus. & Prof. Code § 6068 and Rule 3.6 of the
15 California Rules of Professional Conduct is not evidence of an actual conflict under
16 sections 327(c) and (e). In short, the Court is required to reconsider whether actual
17 conflicts exist, *not* whether there were purported violations of rules governing attorney
18 conduct.

20 ³ Erika briefly argues that there is "newly discovered evidence" that the Richards Firm did not
21 disclose an apparent connection in violation of FRBP 2014 with a petitioning creditor, Kimberly Archie. As
discussed below, this is false.

22 ⁴ To the extent Erika moves under Rule 60(b), Erika similarly fails to follow the correct standard.
23 "Rule 60(b) 'provides for reconsideration only upon a showing of (1) mistake, surprise, excusable neglect;
(2) newly discovered evidence; (3) fraud; (4) a void judgment; (5) a satisfied or discharged judgment; or (6)
24 'extraordinary circumstances' which would justify relief.'" See *School Dist. No. 1J, Multnomah County v.*
AC & S, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).

25 ⁵ Although not relevant to whether the Court can reconsider the order granting the Application, the
Richards Firm has not violated Cal. Bus. & Prof. Code § 6068 or Rule 3.6 of the California Rules of
Professional Conduct. See Declaration of Erin Joyce filed in support of the Richards Firm's opposition.
26 Moreover, Erika has offered no evidence of any prejudice. Erika has not provided a declaration that any of
Richards' statements were false, and Erika's counsel has never asked Richards to remove or modify any
27 posts for inaccuracies. See Declaration of Ronald Richards. Instead, Erika relies on incomplete
conversations from unverified accounts. See Declaration of Bjorn Wallman filed in support of the Richards
28 Firm's opposition.

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Erika not only fails to argue the correct grounds for reconsideration, but also makes no explanation as to how Richards' alleged out of court comments⁶ create an actual conflict that warrants reconsideration of the Application. The Application was granted under sections 327(c) and (e). Courts have held that "where the trustee seeks to appoint counsel only as 'special counsel' for a specific matter, there need only be no conflict between the trustee and counsel's creditor client with respect *to the specific matter itself*." *Stoumbos v. Kilimnik (In re Am. Alloy Metals)*, 988 F.2d 949, 964 (9th Cir. 1993) (internal citation omitted) (emphasis added). "Section 327(e) has a narrower focus than § 327(a), and imposes fewer restrictions on the proposed attorney." *See In re Polaroid Corp.*, 424 B.R. 446, 452 (Bankr. D. Minn. 2010). Although Section 327(c) "applies generally to all employment under section § 327...clearly the 'actual conflict of interest' that it references must be analyzed in the narrower context of § 327(e)." *Id. citing Stombous*, 988 F.2d at 964. Nowhere in the Motion does Erika argue that there are actual conflicts of interest with respect to the Richards Firm's specialized employment. Rather, Erika simply recycles her prior arguments that Richards should not be permitted to publicly comment about her (despite being a public figure), and that Richards' public comments warrant disqualification. A "motion for consideration is not permitted...to rehash the same arguments made the first time..." *See In re Greco*, 113 B.R. at 664. The Court has unequivocally rejected these arguments and refused to issue a gag order. *See* June 8, 2021 Transcript at 6:2-14, Ex. "1." In sum, Erika has not argued that there are any actual conflicts, nor has she cited any evidence, new or otherwise, of any *actual* conflicts—she simply chooses to disregard binding Ninth Circuit precedent regarding Rule 59(e).

2. Erika Requests Relief Beyond the Scope of a Rule 59(e) Motion

Erika also requests affirmative relief concerning issues not before the Court and beyond the scope of a Rule 59(e) motion. "Rule 59(e) was added to the Federal Rules of

⁶ Erika does not provide any admissible evidence regarding Richards' alleged comments. *See* the Trustee's Evidentiary Objections concurrently filed.

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1 Civil Procedure in 1946. Its draftsmen had a clear and narrow aim. According to the
2 accompanying Advisory Committee Report, the Rule was adopted to '[m]ake clear that
3 the district court possesses the power to rectify its own mistakes in the period
4 immediately following the entry of judgment." See *White*, 455 U.S. at 450. "[F]ederal
5 courts generally have invoked Rule 59(e) only to support reconsideration of matters
6 properly encompassed in a decision on the merits." *Id.*

7 Erika's request that the Court "find that Mr. Richards is unfit and should be
8 disqualified from serving as counsel to a federal bankruptcy trustee" is improper. See
9 Motion at 16:9-11. A motion to reconsider is brought only to correct a prior order based
10 on a reconsideration of the merits. See *White*, 455 U.S. at 450. A request for a finding
11 that counsel is unfit to represent a trustee is an affirmative request that cannot be brought
12 in a motion for reconsideration because it is not correcting anything in the prior order. At
13 the hearing on the Application, the Court properly considered whether there were any
14 actual conflicts of interest with respect to the Richards' Firms employment. Again, this is
15 the only issue before the Court right now. Richards' fitness as special litigation counsel
16 was never at issue in the Application. It is not at issue now. Erika's request is
17 inappropriate and a plain attempt to subvert the Trustee's right to her choice of counsel—
18 it should not be considered by the Court.

19 **3. The Richards Firm Fully Complied with FRBP 2014**

20 Erika's contention that the Richards Firm failed to comply with FRBP 2014 is
21 wrong and without support. Under FRBP 2014, an application to employ counsel "shall
22 be accompanied by a verified statement of the person to be employed setting forth the
23 person's connections with the debtor, creditors, or any other party in interest..." FRBP
24 2014(a). As described by a leading treatise:

25 The term "connection" is an unfortunate one. Arguably two people are
26 "connected" if they serve together on a charitable board or are even
27 friends...The "connections" cited by the courts run to fee sharing
28 arrangements and the like that might affect the court's decision to approve
the employment.

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1 See 9 Collier on Bankruptcy ¶ 2014.05 (Alan N. Resnick & Henry J. Sommer eds., 16th
2 ed.).

3 The Richards Firm has fully complied with FRBP 2014(a). When the Application
4 was filed, the Richards Firm fully disclosed its representation of other creditors.
5 Moreover, the Richards Firm has repeatedly agreed that it would not pursue certain
6 claims of these creditors that belong to the Estate. The Court has recognized these
7 agreements from Richards at two separate hearings, and in two separate orders. See
8 Orders at Exs. "2," and "3."

9 Erika's newfound "evidence" of the "connection" between the Richards Firm and
10 Ms. Archie, a petitioning creditor, does not warrant denial of the Application. Because no
11 "connection" exists between the Richards Firm and Ms. Archie, there was no violation of
12 FRBP 2014(a). Erika's assertion is problematic for three reasons. First, Erika provides
13 no evidence that at the time of the Application, Richards even knew that Ms. Archie was
14 being interviewed in the same documentary. Indeed, Richards did not know that Ms.
15 Archie was participating in the documentary until *after* it aired. The Richards Firm could
16 not have disclosed a fact that it had no knowledge of. See Declaration of Ronald
17 Richards at ¶ 6. Second, there is no connection between the Richards Firm and Ms.
18 Archie. The Richards Firm has never had any legal, business, or personal relationship
19 with Ms. Archie or any other petitioning creditors. *Id.* Third, Erika's definition of
20 "connection" is overly broad and unworkable in practice. According to Erika, the
21 Richards Firm is "connected" to Ms. Archie because both allegedly participated in the
22 same documentary. If Erika's understanding of "connection" were true, a party could
23 seek disqualification of counsel any time opposing counsel provided statements to be
24 published in the same article. In this situation, a party could seek disqualification of
25 counsel in nearly every high profile bankruptcy case where interviews take place. Erika's
26 theory does not make sense. This is made clear by the fact that Erika fails to explain
27 how this "connection" poses any threat to the Estate or how the Richards Firm's duty to
28 represent the Estate is compromised. Mere coincidence is not a connection, and is

1 certainly no reason to allow Erika to infringe on the Trustee's right to choice of counsel.
2 The Court should not grant the Motion.

3 **C. The Motion Will Disrupt the Trustee's Ongoing Investigation and**
4 **Pursuit of Claims**

5 Erika is attempting to disrupt the Trustee's ongoing investigation and pursuit of
6 claims through the Motion. The Trustee's special litigation counsel, the Richards Firm,
7 has been actively investigating and pursuing the Estate's claims against Erika, as
8 evidenced by the pending 2004 examinations and the Complaint. If the Motion is
9 granted, the Trustee will be left to look for new counsel in the middle of her investigation
10 and pursuit of claims. The Trustee will then have to incur the additional expense of
11 seeking approval of new counsel's employment, and spend additional time waiting for her
12 choice to be approved. Once appointed, new counsel will then need more time to
13 become familiar with the issues and facts at hand. This delay may prejudice the
14 Trustee's investigation. See Declaration of Elissa D. Miller.

15 Erika's attempt to undermine any pending investigation and the pursuit of claims
16 against her is clear. She recently opposed the motion to approve a stipulation for relief
17 from stay so special litigation counsel for the trustee in Thomas Girardi's individual case
18 could proceed against her. Moreover, Erika has demonstrated that she is willing to now
19 impede the Trustee's efforts to protect victims of the Debtor by opposing the Trustee's
20 recent motions to transition cases. Prior to the granting of the Application, Erika did not
21 oppose any of the Trustee's similar motions. Now, Erika appears willing to stop at
22 nothing to obstruct the investigation and pursuit of claims and prejudice the Estate. The
23 Trustee should not be prejudiced by Erika's blatant efforts to interfere with the Trustee's
24 efforts and protection of the Debtor's clients.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, the Trustee requests that the Court enter an order
3 denying the Application without a hearing.

4
5 DATED: July 16, 2021

SMILEY WANG-EKVALL, LLP

6
7
8 By:



PHILIP E. STROK

Attorneys for Elissa D. Miller, Chapter 7
Trustee

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DECLARATION OF ELISSA D. MILLER

I, Elissa D. Miller, declare as follows:

1. I am the duly appointed chapter 7 trustee for the bankruptcy estate of Girardi Keese. I am also a partner at the law firm SulmeyerKupetz, a Professional Corporation. I know each of the following facts to be true of my own personal knowledge, except as otherwise stated and, if called as a witness, I could and would competently testify with respect thereto. I make this declaration in support of the *Opposition to Motion for Reconsideration of Order Granting Chapter 7 Trustee's Application to Employ the Law Offices of Ronald Richards & Associates, A.P.C. as Special Litigation Counsel* (the "Opposition"). Unless otherwise defined in this declaration, all terms defined in the Opposition are incorporated herein by this reference.

2. I am currently investigating and pursuing claims against Ms. Erika Girardi. On July 14, 2021, the Richards Firm, my special litigation counsel, filed the Complaint against Erika.

3. I will need to begin looking for new special litigation counsel if the Court grants Erika's Motion. The search for new special litigation counsel will be in the midst of my investigation and litigation of the Complaint against Erika, and will require the Estate to incur additional expenses to seek approval of my potential new special litigation counsel.

4. In addition to the extra expenses the Estate would incur if the Motion is granted, I will also have to wait additional time for approval of my new special litigation counsel. After approval, new special litigation counsel will need to spend additional time to familiarize itself with the issues and facts at hand. I believe that the increased delay may result in prejudice to my investigation.

5. The current special litigation counsel is my choice of counsel. It would be prejudicial for me to waste valuable time looking for new counsel.

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1 6. Mr. Richards has worked tirelessly and with the tenacity I expected when I
2 retained him. The Estate is well-served by his representation to investigate this target,
3 Erika Girardi.

4 I declare under penalty of perjury under the laws of the United States of America
5 that the foregoing is true and correct.

6 Executed on this 16th day of July, 2021, at Los Angeles, California.

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Elissa D. Miller

DECLARATION OF RONALD RICHARDS

I, Ronald Richards, declare as follows:

1. I am an attorney with the Richards Firm, special litigation counsel to Elissa D. Miller, the chapter 7 trustee for the bankruptcy estate of Girardi Keese. I know each of the following facts to be true of my own personal knowledge, except as otherwise stated and, if called as a witness, I could and would competently testify with respect thereto. I make this declaration in support of the *Opposition to Motion for Reconsideration of Order Granting Chapter 7 Trustee's Application to Employ the Law Offices of Ronald Richards & Associates, A.P.C.* (the "Opposition"). Unless otherwise defined in this declaration, all terms defined in the Opposition are incorporated herein by this reference.

2. On April 26, 2021, the Trustee filed the Application to employ the Richards Firm as special litigation counsel.

3. On June 8, 2021, the Court held a hearing on the Application. I attended and participated in oral argument at the hearing on the Application. A true and correct copy of the transcript I ordered of the June 8, 2021 hearing on the Application is attached hereto as Exhibit "1."

4. At the hearing on the Application, I stated that the Richards Firm would not pursue claims to recover transfers from the Debtor to Erika on behalf of the Richards Firm's creditor clients. I previously made the same representation to the Court at an earlier hearing on a motion for remand, as recognized in this Court's order granting the motion for remand. A true and correct copy of the order granting the motion for remand is attached hereto as Exhibit "3."

5. On June 10, 2021, the Court entered an order granting the Application. A true and correct copy of the order granting the Application is attached hereto as Exhibit "2."

6. The Richards Firm has never had any legal, business, or personal relationship with Ms. Kimberly Archie or any of the other petitioning creditors. Further, I did not know that Ms. Archie had participated in the documentary produced by ABC until

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1 after the documentary aired because I saw her on television. I have no legal connection
2 to Ms. Archie whatsoever.

3 7. I have never received a request from counsel for Erika to remove or modify
4 any of my online posts about Erika for inaccuracies.

5 8. No one from Erika Girardi's management has ever complained about
6 anything that could be attributable to my office as being inaccurate or untrue.

7 9. I have never met or spoken with Erika Girardi and have no personal agenda
8 whatsoever related to her. I am only taking direction from my client, the Trustee.

9 I declare under penalty of perjury under the laws of the United States of America
10 that the foregoing is true and correct.

11 Executed on this 16th day of July, 2021.

12 
13

14 Ronald Richards
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EXHIBIT "1"

1 UNITED STATES BANKRUPTCY COURT
2 CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES

3 --oOo--

4 In Re:) Case No. 2:20-bk-21022-BR
5 GIRARDI KEESE,) Chapter 7
6 Debtor.) Los Angeles, California
7 -----X Tuesday, 10:00 A.M.
June 8, 2021

8 HEARING RE: CHAPTER 7
9 TRUSTEE'S APPLICATION TO
10 EMPLOY THE LAW OFFICES OF
11 RONALD RICHARDS & ASSOCIATES,
A.P.C., AS SPECIAL LITIGATION
COUNSEL

12 TRANSCRIPT OF PROCEEDINGS
13 BEFORE THE HONORABLE BARRY RUSSELL
14 UNITED STATES BANKRUPTCY JUDGE

15 APPEARANCES:

16 For the Trustee: LEI LEI WANG EKVALL, ESQ.
Smiley Wang-Ekvall, LLP
17 3200 Park Center Drive
Suite #250
18 Costa Mesa, California 92626

19 For Erika Keese: PETER J. MASTAN, ESQ.
Dinsmore & Shohl, LLP
20 550 South Hope Street
Suite #1765
21 Los Angeles, California 90071

22 Special Litigation RONALD RICHARDS, ESQ.
Counsel: PO Box 11480
23 Beverly Hills, California 90213

24 Proceedings produced by electronic sound recording;
25 transcript produced by transcription service.

1 Court Recorder: Wanda Toliver
2 U.S. Bankruptcy Court
3 Central District of California
4 Edward R. Roybal Federal Building
5 and Courthouse
6 255 East Temple Street, Room #1639
7 Los Angeles, California 90012
8 (855) 460-9641

9 Court Transcriptionist: Ruth Ann Hager, C.E.T.**D-641
10 Ben Hyatt Certified Deposition
11 Reporters
12 17835 Ventura Boulevard
13 Suite #310
14 Encino, California 91316
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1 LOS ANGELES, CALIFORNIA, TUESDAY, JUNE 8, 2021

2 10:02 A.M.

3 --oOo--

4 THE CLERK: #5.00, Girardi Keese.

5 THE COURT: All right. Make your appear -- you
6 can stay -- make your appearance where you're at and --

7 THE CLERK: You have to say that --

8 THE COURT: Oh, I'm sorry. I -- thank you. She
9 keeps me out of trouble.

10 MS. WANG EKVALL: We're all a bit rusty, Your
11 Honor. Good morning, Your Honor. Lei Lei Wang Ekvall with
12 Smiley Wang Ekvall, counsel for Elissa Miller, Chapter 7
13 Trustee.

14 THE COURT: Okay. Thank you. And the only time
15 I'd like you to take your mask down is when you speak, but
16 other than that, use whatever your discretion. We want to
17 keep everybody as safe as we can.

18 MR. RICHARDS: Good to see you, Your Honor. You
19 look great. Ronald Richards with Law Offices of Ronald
20 Richards & Associates, APC, also appearing on #5.00.

21 THE COURT: All right.

22 MR. MASTAN: Good morning, Your Honor. Peter
23 Mastan of Dinsmore & Shohl, LLP, appearing on behalf of
24 Erika Girardi.

25 THE COURT: Okay. This is the -- I've read your

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1 papers with quite -- with interest. This is the Trustee's
2 application to employ your firm. It's your -- who wants
3 to -- I guess you want to -- who wants to -- it's either --
4 it would be, I guess whichever one the two of you want to
5 talk. Again, I've read all the papers and you'll get the
6 second-to-the-last word.

7 MS. WANG EKVALL: Okay. Thank you, Your Honor.

8 THE COURT: You're welcome.

9 MS. WANG EKVALL: We'll just summarize our
10 position then, Your Honor. We believe that Ms. Jane
11 (phonetic) or Mrs. Girardi does not have standing to oppose
12 the employment.

13 THE COURT: Well, let me do this. I have some
14 question about it, but I'm going to assume for our purposes
15 that standing is always a tricky question at best, so I'm
16 just going to assume for our purposes the standing rather
17 than take the time. She may or may not but I'm assuming at
18 this point, so why don't you go to the merits of it?

19 MS. WANG EKVALL: Moreover, Your Honor,
20 Mr. Richard's firm is being employed for a very specific
21 purpose, a very narrow purpose. He is being employed as
22 special counsel. And under 363 -- sorry -- 327 --

23 THE COURT: Close enough. I understand this
24 is --

25 MS. WANG EKVALL: Sorry.

Page

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1 THE COURT: It's all right.

2 MS. WANG EKVALL: 327(c) and (e), Your Honor.

3 The fact that Mr. Richards represents a creditor in the
4 case does not exclude him or prevent him for being
5 employable by the Trustee. And in this case there is no
6 actual conflict that would prohibit him from being employed
7 for the limited purpose as stated in the employment
8 application of investigating and pursuing claims against
9 Ms. Jane. With respect to claims review in general or
10 claim objections in general, that will be handled by my
11 office as the Trustee's general bankruptcy counsel.

12 THE COURT: All right. Counsel.

13 MR. MASTAN: Good morning again, Your Honor. But
14 there are conflicts here and there are two of them that are
15 actual conflicts of interest.

16 I do want to start by making sure that everyone
17 is aware that Ms. Girardi is not here to impede the
18 Trustee's investigation. We understand that has to happen.
19 Mr. Rund in the other case is doing the same thing. We
20 didn't oppose his retention as special counsel to look
21 into --

22 THE COURT: All right.

23 MR. MASTAN: -- the investigation. We're only
24 saying that the investigation can't be done by Mr. Richards
25 or his firm because of his conflicts of interests. And

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1 again, there are two of them. And what --

2 THE COURT: It's also clear you're not happy with
3 him. I mean, he's a little more vocal than I am, but
4 that -- you know, you're complaining about all that. It's
5 not my style, but -- but I -- it's clear it's gotten under
6 your client's skin and so that may -- I don't know if
7 that's part of it, but my -- but as far as that position
8 is -- you know, I'm not going to issue any gag order. I
9 don't even know if I have the power to do that at all. And
10 if you have any serious complaint there are other people,
11 entities you can go to complain to conduct, but I --
12 myself, I'm not going to -- I can't and would not stop him
13 from exercising his First Amendment rights. So I'll leave
14 it at that.

15 MR. MASTAN: Okay. Fair enough. And that --

16 THE COURT: It was interesting reading, however.
17 I was -- a lot of stuff there --

18 MR. MASTAN: And again --

19 THE COURT: -- to look through.

20 MR. MASTAN: That is --

21 THE COURT: It's not my -- my style --

22 MR. MASTAN: Right.

23 THE COURT: -- doesn't make it right or wrong.
24 It just -- I just don't -- I think he has his right to
25 express his views and what have you and it's clear he is

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1 not thrilled with your client. I mean, so --

2 MR. MASTAN: Fair enough.

3 THE COURT: -- that's a fact.

4 MR. MASTAN: And that was an if-he's-employed
5 kind of thing, but it doesn't go to the thrust of the
6 substance of the real argument.

7 THE COURT: Oh, no, I understand that. I
8 understand, but I just get that out in front. It was clear
9 that there was a huge amount of stuff. I didn't read every
10 page of everything, but I got the flavor.

11 MR. MASTAN: So we've taken sort of standing and
12 the gag order.

13 THE COURT: Yes.

14 MR. MASTAN: So get to the main -- the main show
15 here.

16 THE COURT: The main thing is your objection
17 because of con -- of alleged conflicts.

18 MR. MASTAN: Yes, let's talk about the conflicts
19 and there are two. First, Mr. Richards is representing
20 creditors the Sheldon and Finn law firms in connection with
21 litigation pending in state court against Ms. Girardi.

22 THE COURT: Right.

23 MR. MASTAN: When we filed this we believed that
24 there were two causes of action that were bring -- being
25 brought against Ms. Girardi. Ms. Wang Ekvall brought to my

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1 attention afterwards which I was not aware of that the
2 fraudulent transfer claims have been taken care of.

3 THE COURT: All right.

4 MR. MASTAN: And I appreciate and thank Ms. Wang
5 Ekvall for doing that. But nothing, as far as I know, has
6 changed the conversion claims. And Mr. Richards on behalf
7 of the Finn/Sheldon law firms is alleging that money went
8 to Girardi Keese and was converted -- their money was
9 converted to -- by Ms. Girardi and others.

10 THE COURT: Right.

11 MR. MASTAN: So at the same time that he is
12 bringing and prosecuting those claims, he is also being
13 retained by the Trustee to look into avoidable transfers
14 from the Girardi & Keese law firm to Ms. Girardi.

15 THE COURT: Right.

16 MR. MASTAN: That's where the money flowed. So
17 at that moment you have an irreconcilable conflict of
18 interest because he cannot both at the same time seek the
19 recovery of those funds on behalf of the Finn/Sheldon law
20 firms and seek it on behalf of the Trustee.

21 What's very important to understand here in
22 addition to that is that there is a pie of assets out
23 there. To the extent that -- and I'll tell you, it ain't
24 big enough to cover anything here that we're talking about.

25 THE COURT: Well, hope springs eternal, but I

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1 guess we don't know for sure.

2 MR. MASTAN: Well, yeah. Yeah.

3 THE COURT: I guess the big thing is, is this
4 big -- you know, the *Porter Ranch* case, but who knows.

5 MR. MASTAN: But who knows. But what I'm saying
6 is her assets.

7 THE COURT: Oh, you're talking about -- oh, I'm
8 sorry. You're talking --

9 MR. MASTAN: Hers, yeah.

10 THE COURT: -- about hers.

11 MR. MASTAN: Hers, yes.

12 THE COURT: Not -- okay, I got it.

13 MR. MASTAN: There's a limited pie out here. And
14 to the extent that -- let's assume they're both correct.
15 Let's assume they're both entitled to judgments. If
16 Mr. Richards geta to judgment first and collects on behalf
17 of the Shinn -- the Finn/Sheldon law firms, that dilutes
18 and takes away completely, I believe, any possible recovery
19 from Ms. Girardi for the estate leaving the estate's
20 creditors in the cold.

21 Now, if Mr. Richards on behalf of the estate gets
22 there and recovers first, then that means -- that's fine
23 for the estate, but then he's now done a disservice to his
24 other creditors who would have 100 percent dollar for
25 dollar on that as opposed to a pro rata distri -- sharing

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1 with the other creditors. Who gets there first? Who makes
2 that decision? You can't have one person, Mr. Richards in
3 his case or his law firm, following the instructions of two
4 masters about one piece -- one pie of assets that's not
5 enough to go around.

6 THE COURT: All right.

7 MR. MASTAN: And over the same funds. It doesn't
8 work.

9 The second conflict of interest relates to the
10 proofs of claim. Mr. Richards has asserted, the
11 Finn/Sheldon law firm has asserted that they have claims to
12 recover against the estate for these -- for what is
13 admittedly an oral agreement for referral fees. California
14 makes those types of agreements unenforceable on their face
15 and I don't think there's any dispute that they were oral
16 agreements. I think that was in their complaint. So there
17 was a patently obvious and necessary opposition and
18 objection by this Trustee to those claims.

19 Now, what do we --

20 THE COURT: What does that have to do with what
21 we're talking about in this case against going after
22 Mrs. Girardi?

23 MR. MASTAN: Well, it has to do with it in two
24 ways. One, whose money is it? Whose money is it? Is this
25 the Finn law firm's claim, Finn/Sheldon law firm's money

Page 11

1 that went through or is it the Girardi Keese law firm's
2 money that went out? Who's going to make that decision?
3 Mr. Richards, as the representative of both, can't.

4 So if he's representing the -- how do I explain
5 this?

6 THE COURT: Take a deep breath. I know it --

7 MR. MASTAN: Yeah, there's no water --

8 THE COURT: -- gets complicated.

9 MR. MASTAN: There's no water. I apologize, Your
10 Honor.

11 THE COURT: Oh, yeah, I guess normally we would
12 but, yeah --

13 MR. MASTAN: Right.

14 THE COURT: -- just given everything else, we
15 don't have any.

16 MR. MASTAN: Right. So while the G case suggests
17 that -- well --

18 THE COURT: I may inform people in the future
19 because I'm now --

20 MR. MASTAN: Should bring a bottle of water.

21 THE COURT: I'm sorry to actually if you want,
22 yeah, to bring it --

23 MR. MASTAN: Yeah.

24 THE COURT: -- I never even thought about it, but
25 that's --

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1 MR. MASTAN: Yeah.

2 THE COURT: -- a good idea.

3 MR. MASTAN: So if there is a claim objection,
4 there has to be one because it's patently --

5 UNIDENTIFIED VOICE: Yeah, I'm listening to
6 Peter --

7 MR. MASTAN: -- objectionable by itself.

8 UNIDENTIFIED VOICE: -- in the middle of oral
9 argument.

10 THE COURT: Excuse me. Stacy, what was that? I
11 heard a voice there.

12 THE CLERK: I got it. I muted him.

13 THE COURT: Okay.

14 MR. MASTAN: Okay.

15 THE COURT: All right. I don't know who that --
16 or what -- go on.

17 MR. MASTAN: So the Trustee at that point is
18 going to be litigating against the same clients as Mr.
19 Richards -- Mister -- as her special counsel.

20 Now, there was a case cited for -- in the
21 *Fondiller* (phonetic) case, I believe -- pull that out -- to
22 suggest that that's not a problem. But in that case the
23 court approved the retention of counsel for creditors, but
24 it made a point to say those creditors aren't involved in
25 the transactions that are taking place.

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1 That's not the case what we have here. Here
2 Mr. Richards' clients are the ones who are asserting that
3 the money is theirs, that the money was recoverable from
4 Ms. Girardi and at the same time that they're all asserting
5 the claims against the estate, same money.

6 THE COURT: Well, tell me again about this oral
7 contract. I mean, what is that claiming and how is that
8 different from the first one we're talking about?

9 MR. MASTAN: It is different in that it is -- it
10 creates a --

11 THE COURT: No, but who are they -- that was
12 between --

13 MR. MASTAN: That was between the Finn/Sheldon --

14 THE COURT: Yes.

15 MR. MASTAN: -- purposed creditors.

16 THE COURT: Yes. And?

17 MR. MASTAN: And the estate because Ms. Miller
18 will have an obligation --

19 THE COURT: No, no, no. Who is the other side of
20 the -- I think I understand. Just for the record --

21 MR. MASTAN: Ms. Miller.

22 THE COURT: Who is the other side of this oral
23 agreement.

24 MR. MASTAN: Oh, it was Girardi & Keese.

25 THE COURT: Okay. And -- okay.

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1 MR. MASTAN: Or Tom Girardi, however.

2 THE COURT: And so that -- okay. Oh, oh, here we
3 go. We got you some --

4 MR. MASTAN: Wow.

5 THE COURT: I didn't realize we had some water,
6 but okay. You're way ahead of me.

7 MR. MASTAN: What a great staff.

8 THE COURT: Well, they keep me going here.

9 MR. MASTAN: Thank you so much.

10 THE COURT: You notice by the electronics here,
11 the screen and all, we are now -- I prefer live for obvious
12 reasons.

13 MR. MASTAN: Yeah.

14 THE COURT: But some hearings we're going to do
15 still on Zoom and they had this -- you see this great
16 screen in here. The staff has been -- and clerk's office,
17 you know, fantastic kind of getting me into the 21st
18 Century.

19 So tell me how -- okay, so that was between --
20 again, the oral between the firm -- the law firm and
21 Mr. Richards' firm and that was to do what?

22 MR. MASTAN: It was a referral fee as it was
23 outlined in the complaint.

24 THE COURT: All right. Referral fee for what
25 case?

Page

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1 MR. MASTAN: TXI. What is it? Oh. Oh, I
2 understand that.

3 THE COURT: Oh, I want to make sure the con --
4 you're talking about the conflict.

5 MR. MASTAN: No, he -- right.

6 MR. RICHARDS: I'm not a party to the oral
7 agreement, Your Honor.

8 MR. MASTAN: I believe --

9 THE COURT: Who's a party to the oral agreement?

10 MR. MASTAN: It's the Finn/Sheldon law firm
11 represented by Mister -- now represented by Mr. Richards.

12 MR. RICHARDS: And two other lawyers.

13 MR. MASTAN: Right.

14 THE COURT: Okay. Well, anyway. One at a time.

15 MR. MASTAN: It's the Finn/Sheldon law firm.

16 THE COURT: Okay.

17 MR. MASTAN: Enters into an oral agreement
18 with --

19 THE COURT: Okay. And that has --

20 MR. MASTAN: -- TX.

21 THE COURT: -- and that's one of these many other
22 cases. It's a referral fee for --

23 MR. MASTAN: Yeah, I think it's called the TXI
24 cases or --

25 THE COURT: Whatever.

Page

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1 MR. MASTAN: -- something like that. Whatever it
2 is.

3 THE COURT: Well, that's another case.

4 MR. MASTAN: Yeah, it doesn't matter.

5 THE COURT: And has that -- is that settled? Has
6 that money already been transferred in?

7 MR. MASTAN: Allegedly the money was transferred
8 into Girardi & Keese, one of the allegations in the
9 complaint.

10 THE COURT: Okay.

11 MR. MASTAN: And then according to the
12 allegations of the complaint --

13 THE COURT: Is that --

14 MR. MASTAN: -- was then transferred out, at
15 least in part allegedly to --

16 THE COURT: I got it.

17 MR. MASTAN: -- Ms. Girar -- to Erika, right.
18 And that's with the --

19 THE COURT: To her and/or to Mr. Girardi or both
20 or --

21 MR. MASTAN: To Mister who?

22 THE COURT: Mr. Girardi or --

23 MR. MASTAN: Oh, they don't specify in the
24 complaint. They say it went to them.

25 THE COURT: In any case, right, right, right.

Page

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1 No, I was just --

2 MR. MASTAN: At least -- yeah.

3 THE COURT: -- tracing. I got it.

4 MR. MASTAN: Right.

5 THE COURT: So the money was come in, they didn't
6 get whatever -- assuming for argument's sake there's a
7 valid agreement, whatever. There's agreement. And then
8 the money went out and then everybody -- any money that
9 went out from the firm to either of the Girardis are going
10 to go after that. That's generally what's going on.

11 MR. MASTAN: In general, yes.

12 THE COURT: Yeah, okay.

13 MR. MASTAN: But at the same time going back,
14 Mr. Richards on behalf of Finn/Sheldon are going after
15 those same funds.

16 THE COURT: Right. Okay.

17 MR. MASTAN: At the same time.

18 THE COURT: All right.

19 MR. MASTAN: And you can't be successful at both.
20 And so if we look at the language --

21 THE COURT: Of course, wouldn't the stay prevent
22 the --

23 MR. MASTAN: -- that was actually --

24 THE COURT: At least as far as Mr. Girardi going
25 after -- those are -- under 548 -- we're talking about 548,

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1 I assume, or something like that. Maybe not 548, but
2 wouldn't those be stayed, those actions? Wouldn't the
3 Trustee be the one to go after those?

4 MR. MASTAN: Not necessarily. Fraudulent
5 transfer, yes.

6 THE COURT: Okay. Fraudulent transfer, but --

7 MR. MASTAN: Yeah, that's been taken care of.

8 THE COURT: But even if -- but for -- but if it's
9 now alleged to be the possession of one or both of them, I
10 understand obviously the tracing problem. Wouldn't that
11 also be -- wouldn't the federal trump that? Wouldn't that
12 be -- that would be -- because it's allegedly -- if it's in
13 their possession allegedly wouldn't that be property of the
14 estate?

15 MR. MASTAN: No.

16 THE COURT: Why not?

17 MR. MASTAN: Not necessarily. Because if all
18 they have is bare legal title, then there's nothing that
19 they can -- then there's no fraudulent transfer to recover
20 and we see that all the time in the context of --

21 THE COURT: Don't you --

22 MR. MASTAN: -- over --

23 THE COURT: Don't you have to get to the end
24 of -- the end of -- to know what the answer is to that?

25 MR. MASTAN: Well, but then who's getting to the

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1 end? Which one of them? They're both moving forward with
2 the Finn/Sheldon defendants saying, hey, that's my money
3 that was converted --

4 THE COURT: Yeah, but wouldn't they have then a
5 claim against the estate? Let's say the estate goes after
6 it and it comes in. Wouldn't -- and money is not going
7 anywhere. Once it comes in here it needs a court order
8 wouldn't they then have a claim and at that point say, no,
9 no, no, that's really our money? I mean, isn't that how it
10 could work?

11 MR. MASTAN: No, because if the Finn/Sheldon
12 creditors are correct that their money was converted by
13 Ms. Girardi --

14 THE COURT: Yeah.

15 MR. MASTAN: -- then the estate can't recover it.

16 THE COURT: Well, that's a bit of a -- but what
17 I'm thinking --

18 MR. MASTAN: It's not property of the estate.

19 THE COURT: -- ahead.

20 MR. MASTAN: Right.

21 THE COURT: That's a big "if." There's all kinds
22 of things. Let's say the estate goes ahead with that.

23 MR. MASTAN: Um-hum.

24 THE COURT: And then the money is there and then
25 wouldn't they still have the claim and say -- to say, no,

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1 that was really -- we can trace it, whatever. Isn't
2 that -- couldn't it work out that way?

3 MR. MASTAN: I don't think it does because that
4 money is going to have to be shifted to recover to recover
5 because it's a fraudulent transfer. Then it was Girardi &
6 Keese' money that was transferred and that's going to be
7 shared with everybody on a pro rata basis.

8 If it was only if it was Finn/Sheldon money that
9 was converted by Ms. Girardi does it not be property of the
10 estate and they would get --

11 THE COURT: No, no, I understand. But --

12 MR. MASTAN: -- (indiscernible). Yeah.

13 THE COURT: -- the way I look at it, sure have to
14 get to the end. You've got to know all the facts to figure
15 out. And also is it possible -- again, I -- this is asking
16 questions.

17 MR. MASTAN: Yeah.

18 THE COURT: I -- as a former trial lawyer I know
19 the questions. I just don't know the answer. Is -- can
20 they actually -- monies come in and it goes in the gen --
21 as I understand it from other litigation here it just went
22 into the general fund. It didn't go in -- it should have
23 gone in obviously to a separate account.

24 MR. MASTAN: I don't know where the money went.

25 THE COURT: But apparently that's not -- from --

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1 again, everything that I know about the case. That's the
2 problem; if it went into a specific account there'd be no
3 tracing problem whatever. But apparently my
4 understanding -- just in general, not this case. I mean,
5 not this litigation you're talking about. It went in and
6 it went to the bank account and then monies went out. It'd
7 be pretty hard to trace that, wouldn't it? I'm just asking
8 you.

9 MR. MASTAN: You know, I don't know what the
10 tracing situation is. I haven't seen the GK bank records.
11 I think they are -- you know, some of the records I
12 understand from Ms. Miller's representations and
13 descriptions pretty messed up --

14 THE COURT: Well, that's what I --

15 MR. MASTAN: Yeah.

16 THE COURT: And again, all my information, all I
17 get is --

18 MR. MASTAN: Right.

19 THE COURT: -- from what's happening in court
20 here.

21 MR. MASTAN: But again, unless they can show that
22 that was GK's money that went to -- the issue is, whose
23 money went out. They both can't win and they're both
24 represented by Mr. Richards.

25 THE COURT: Well, not necessarily. GK, for

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1 instance, that debtor could if it's an improper transfer to
2 either of them can get it back. But even then, that would
3 be subject to -- wouldn't it be subject to somebody else
4 saying, yeah, it originally was GK, but actually we can
5 trace it.

6 MR. MASTAN: And, in fact, the answer to that is
7 no. And that is because if it was -- if it's purely
8 traceable by the Sheldon/Finn law firms, then it is not a
9 transfer of GK's interest of funds.

10 THE COURT: Well, again, my question is, how do
11 you know that until you -- and my question -- I get it.

12 MR. MASTAN: Um-hum.

13 THE COURT: But in order to get the answer to
14 what you said, you literally have to -- you have to
15 litigate the whole thing and figure out all of it. And
16 then when you're all done, then you can look back, but I
17 don't see how you would know at the beginning of the
18 lawsuit who's right.

19 MR. MASTAN: So let me answer that with a
20 question. Who's going to bring that lawsuit? Who's going
21 to make those determinations? Mr. Richards on behalf of
22 his cli -- his purported creditor clients or Mr. Richards
23 on behalf of the Trustee as its --

24 THE COURT: But aren't they going -- let me ask
25 you this. But I get it.

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1 MR. MASTAN: Yeah, okay.

2 THE COURT: Who goes first. But it seems to me
3 that -- again, I'm not -- I'm trying to explore because you
4 know much more --

5 MR. RICHARDS: Yeah.

6 THE COURT: -- about this than I do. That's why
7 I like it more in person, so we --

8 MR. MASTAN: Sure.

9 THE COURT: -- we can ask is, there's really two
10 separate things. Let's say that -- let's say for whatever
11 reason Girardi Keese said, you know, it shouldn't -- for
12 whatever reason it shouldn't have gone to you. Wouldn't
13 necessarily have to decide what right anybody else had to
14 them, would it?

15 MR. MASTAN: No, that's incorrect.

16 THE COURT: Okay.

17 MR. MASTAN: In order for the Girardi and Keese
18 trustee to recover a fraudulent transfer part of the
19 statute is there must be a transfer of the debtor's
20 interest in property.

21 THE COURT: Right.

22 MR. MASTAN: And what is clear from case law is
23 if you have bare legal title that is not a transfer of the
24 debtor's --

25 THE COURT: Oh, I get it.

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1 MR. MASTAN: -- interest in property.

2 THE COURT: I get it.

3 MR. MASTAN: So if this money belongs to the
4 Finn/Sheldon defend -- lit -- law firms --

5 THE COURT: Okay.

6 MR. MASTAN: -- then -- and --

7 THE COURT: No, I agree. I agree with your --

8 MR. MASTAN: -- then the Trustee can't do it.

9 THE COURT: -- what -- the laws.

10 MR. MASTAN: Okay.

11 THE COURT: Why don't you move on because we're
12 never going to decide this, but I want at least in my own
13 mind get an idea of --

14 MR. MASTAN: Right.

15 THE COURT: -- what we're talking about.

16 MR. MASTAN: And my point is, you don't need to
17 know the answer to that question now. All you need to know
18 how is that Mr. Richards is on both sides.

19 THE COURT: I got it.

20 MR. MASTAN: And it's a question of who gets
21 there first.

22 THE COURT: Okay.

23 MR. MASTAN: I do want to address briefly --
24 there was some discussion in the reply brief about five --
25 sorry, 327(e) and its applicability.

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1 THE COURT: Right.

2 MR. MASTAN: If you read the statute, 327(a)
3 talks about being disinterested and not having a conflict.
4 And 327(c) says you don't have a conflict solely -- solely
5 by representation of a trustee.

6 THE COURT: No, I understand.

7 MR. MASTAN: Okay. Now, 327(e) read through on
8 its face relates to the debtors. Now, there's a case out
9 there from -- called *Polaroid* that was cited in the
10 Trustee's reply brief. The *Polaroid* case talks about, you
11 know, well, we have to analyze it also in the 320 -- in the
12 con -- the conflict under 327 and some additional language
13 that exists in that case -- or in 327(e). But my point is,
14 the *Polaroid* case is a debtor case. That's why it's being
15 analyzed under 327(e). It's not a representation of the
16 creditors' situation.

17 So what we have, Your Honor, are two conflicts of
18 interest. One is between Mr. Richards representing both
19 the Shinn Fel -- Finn/Sheldon law firm.

20 THE COURT: Easy for you to say.

21 MR. MASTAN: Right. As well as the Trustee
22 seeking to recover the same money. And as you -- your
23 thoughtful question was, well, we don't know the answer and
24 my point is you don't need to know the answer. There's an
25 irreconcilable conflict of interest at that point because

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1 he is on both sides. And because at one point must decide
2 he has to argue that it was Finn/Sheldon money that went to
3 Ms. Girardi. On the other side he has to argue that it was
4 Girardi & Keese money that went to Girardi.

5 THE COURT: All right. Okay. Now I do
6 understand that.

7 MR. MASTAN: Okay. And that's the important --
8 that's the single most important part of this. That's what
9 we need to understand. If you've got that, we're good.

10 THE COURT: Okay. Now I do understand.

11 MR. MASTAN: Okay.

12 THE COURT: And I appreciate it. All right.

13 So what do you have to say? We now know what the
14 issue is. I mean, I know what the issue was. We know at
15 least -- now I know more about the actual lawsuit and so
16 forth, so what about that?

17 MS. WANG EKVALL: So under 327(c), Your Honor --

18 THE COURT: Well, let me ask you specifically.
19 It sounds like he has a good point. Is he correct that
20 that's what they're-- they -- there -- is it that they are
21 seeking -- Mr. Richards' client is seeking that, no, this
22 is not property of the estate. Any transfers that were --
23 that the -- that you would be interested in, that is, from
24 the -- representing the Trustee that that's -- now that's
25 commingled or whatever the argument is and that's our money

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1 and if they have a claim then they have to file a claim or
2 if -- is he going to be arguing that, no, no, it's not
3 property of the estate because we had this agreement. What
4 factually is wrong with that argument?

5 MS. WANG EKVALL: Well --

6 THE COURT: Now, answer that specific -- because
7 I understand what the law is. That seems to be a pretty
8 good argument unless I'm missing something.

9 MS. WANG EKVALL: So under (c) there has to be an
10 actual conflict --

11 THE COURT: No, no --

12 MS. WANG EKVALL: -- and the fact that we're all
13 discussing these --

14 THE COURT: Well, wait. Let me stop you. That's
15 why I'm pretty good at getting right to the heart of it.
16 That's the issue. Is if -- and again, I have no idea
17 whether this oral contract is good -- forget -- I'm
18 assuming just for argument's sake that's where we're at.
19 So I'm not deciding it, but -- so my question is, it would
20 seem that he has a very good point that it is Mr. Richards'
21 client is their position going to be or is it the position
22 no, this was not -- we had an agreement, this was never the
23 estate's money and, therefore, you owe it to us. Is that
24 their argument? Yes or no.

25 MS. WANG EKVALL: No. I mean, it can't be

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1 because at the end of the day all it was, was a contractual
2 agreement. It wasn't their money. It wasn't that --

3 THE COURT: Well, I want to ask you -- no, no.
4 But whatever the law -- I want to ask you -- and I can ask
5 Mr. Richards here a very simple question that he raised.
6 Whatever you -- and again, I know what your position is.
7 I'm the only neutral person here at least arguing about
8 this. It doesn't matter to me one way or the other. I
9 just follow the law.

10 But my question is, he's -- counsel has just said
11 that Mr. Richards is going to be arguing the -- that it is
12 their money and not the estate's money, period. Whether
13 he's right or wrong, that's not the point. It is his
14 position that it is their money and that's the estate's and
15 if that's the case, then it looks like there's a conflict.

16 So my question is, you can answer it or I can ask
17 Mr. Richards.

18 MS. WANG EKVALL: I think there are lots of
19 assumptions made there. If it's true --

20 THE COURT: No, but I get to ask the questions.
21 That's what --

22 MS. WANG EKVALL: No, I understand, Your Honor.
23 I'm trying to answer.

24 THE COURT: So it's a very simple question. Is
25 his position that this money is not property of the estate

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1 pursuant to this oral agreement, whatever. For whatever
2 reason, period. It's a simple question. Yes or no.

3 Maybe I'll ask --

4 MS. WANG EKVALL: I don't know.

5 THE COURT: -- you, Mr. Richards.

6 MR. RICHARDS: Yes, Your Honor. The answer is
7 no. We saw in your order remanding the case we said all
8 the transfers, if any, to Erika Girardi are property of the
9 estate. We agreed to this --

10 THE COURT: Well, then let me ask you. You heard
11 counsel just saying that your lawsuit is -- that -- is also
12 going on and it was remanded to the state court, right?

13 MR. RICHARDS: And I didn't file the lawsuit just
14 so the Court --

15 THE COURT: It doesn't matter who filed it. I
16 want to know -- you're counsel, right? You're in the firm.

17 MR. RICHARDS: I (indiscernible -- away from
18 microphone) --

19 THE COURT: Right, right. So it's a very simple
20 question. Is it -- do you -- are you going to continue
21 with that lawsuit?

22 MR. RICHARDS: Yes, there's other defendants and
23 there's other --

24 THE COURT: Okay. No. Other -- as to
25 Mrs. Girardi. That's who we're talking about here. Only

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1 her.

2 MR. RICHARDS: The truthful answer is we have to
3 file an amended complaint, so that complaint that was
4 remanded it hasn't even been --

5 THE COURT: No, I want you to tell me yes or no.
6 It's very simple depending on the --

7 MR. RICHARDS: We're not pursuing any money that
8 would be property of the estate.

9 THE COURT: No, no. I want you to -- are you
10 going after her for any money that was distributed --
11 you've heard what the argument is. Namely, money came in,
12 lots of money came in and then the Trustee -- what you're
13 going to be -- if you -- if I approve the hiring in this
14 case would be to go after money that was transferred from
15 the debtor, that is, the Girardi Keese to Mrs. Girardi.
16 That's right and that's what you're being hired for, right?

17 MR. RICHARDS: We're not going after any of those
18 funds. We already made a written agreement to that effect
19 with the Trustee. That's why they brought their opposition
20 to the motion to remand.

21 THE COURT: No, no. With -- no, again, again --
22 but I know the Trustee wants to go after her, Mrs. Girardi,
23 for monies that were transferred from the firm to her. Is
24 that correct? That's what you're being hired for?

25 MR. RICHARDS: That is correct. To investigate

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1 those.

2 THE COURT: To invest those -- those claims. And
3 again, I have no opinion. I don't -- of any of this other
4 than that's what you're being hired to, to go after and see
5 to what extent those could be recovered for the Girardi
6 Keese case, right?

7 MR. RICHARDS: That's correct.

8 THE COURT: Okay. So those are monies that --
9 I'm repeating myself *ad nauseam*, but the money that came
10 into the -- into Girardi Keese went out to her, to Mrs.
11 Girardi, right?

12 MR. RICHARDS: Well, we don't know.

13 THE COURT: Well, but that's what you're
14 investigating.

15 MR. RICHARDS: That's right and those are
16 fraudulent conveyances.

17 THE COURT: Well, whatever. Whatever. What I'm
18 talking about, just cutting through all the discussion --

19 MR. RICHARDS: And we --

20 THE COURT: And so you are -- when you're being
21 hired to investigate whether any money from Girardi Keese
22 went to her and, if so, is there anything that the estate
23 can recover.

24 MR. RICHARDS: That's right. And a week ago I
25 was in front of you and we put on the record because the

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1 other lawyer asked me to do so for another co-defendant
2 that those funds belong to the estate.

3 THE COURT: No, I understand that. I remember
4 that.

5 MR. RICHARDS: It's in your order remanding it --

6 THE COURT: I --

7 MR. RICHARDS: Bullet proof.

8 THE COURT: I get it, but I want -- but again, I
9 want to make it clear on the record because you are the one
10 who's going to be hired --

11 MR. RICHARDS: Right.

12 THE COURT: -- and counsel -- and so -- so we
13 know that you're going to be hired to go after money that
14 came out of Girardi Keese potentially to investigate to
15 Mrs. Girardi and, if so, can that be recovered under any
16 theory.

17 MR. RICHARDS: Back to the estate.

18 THE COURT: Back to the estate. Back to what
19 your other -- the state court case. Are you going after
20 any money -- just her. Just Mrs. Girardi, not anybody
21 else -- that is, that same money, namely the money that
22 came from the estate whether or not --

23 MR. RICHARDS: No, you're not because the only
24 money that came from the state could be a fraudulent
25 conveyance.

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1 THE COURT: Right. No, no, but you -- her -- his
2 argument is saying that you might then claim this was never
3 the -- it was never Girardi Keese's money because you had
4 a -- it was really your money.

5 MR. RICHARDS: That's not the deal we made with
6 the Trustee. We waived any claims of transfers to
7 Ms. Girardi.

8 THE COURT: Okay. So you're saying on the record
9 that there's no conflict because you are not -- in this
10 lawsuit you're going to have to amend it and it will be a
11 part of any order --

12 MR. RICHARDS: That's correct.

13 THE COURT: -- if I approve this that it will
14 make it clear that you've represented that indeed there's
15 no conflict as far as that because you are not -- and your
16 lawsuit will be amended as to her -- you said there were
17 other parties involved -- that you will be not going after
18 as to Mrs. Girardi any money that came from the estate
19 whether it was property of the estate or not. It came from
20 the estate.

21 MR. RICHARDS: That's correct and that would have
22 eviscerated the good faith agreement we made --

23 THE COURT: No, no. No, I --

24 MR. RICHARDS: -- with the Trustee. So
25 (indiscernible) oppose a remand.

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1 THE COURT: No, no, I understand it. We were
2 here -- I don't know if you were here last time or not. I
3 don't remember who was here. I was here, you were here.

4 MR. RICHARDS: Mr. Leer (phonetic) was the
5 attorney --

6 THE COURT: He -- yeah.

7 MR. RICHARDS: -- (indiscernible) and he put that
8 on the record --

9 THE COURT: Right. And so --

10 MR. RICHARDS: -- and in the order.

11 THE COURT: So it's clear to me that what you say
12 then there is no conflict because you're not going to be
13 going after any of that -- any of that -- can't make any
14 claim at all to any of that money, right?

15 MR. RICHARDS: That's where -- we couldn't.

16 THE COURT: Okay. I got it.

17 MR. RICHARDS: For all the reasons why we made
18 the settlement with the Trustee not to oppose the remand.

19 THE COURT: Okay.

20 MR. RICHARDS: There'd be no -- that's not -- you
21 don't make a deal and then say, we're really going after
22 it. It's in your court order. I mean --

23 THE COURT: I understand.

24 MR. RICHARDS: -- even though, Your Honor, the
25 label is not dispositive, your order says transfer.

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1 THE COURT: Okay.

2 MR. RICHARDS: And so I -- I'm not going to play
3 a game with the Court, but I'm telling the Court keep --
4 don't keep the case because we're not pursuing the
5 estate --

6 THE COURT: No, I understand.

7 MR. RICHARDS: -- and I still (indiscernible) --

8 THE COURT: That was the conversation we had last
9 time. Let me finish and then you wanted --

10 MR. RICHARDS: All right.

11 THE COURT: Why don't you quickly respond because
12 Mr. Richards said it very clear on that point.

13 MR. MASTAN: What Mr. Richards just said was
14 they're not going after any estate money.

15 THE COURT: No, no.

16 MR. MASTAN: That's what he said.

17 THE COURT: No, that isn't what I said or what he
18 said. Any money that came from -- was transferred from
19 Girardi Keese to her. I didn't even get into whether it
20 was estate property at all.

21 MR. MASTAN: Okay. But -- okay, that's why --
22 those are the words I thought he just said, but if your
23 understanding is he's not going through any property that's
24 from Girardi & Keese out --

25 THE COURT: Right. To her.

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1 MR. MASTAN: Okay. To her.

2 THE COURT: To her.

3 MR. MASTAN: Here's the problem with that.

4 THE COURT: Briefly because you've already had
5 your argument.

6 MR. MASTAN: Real briefly. The briefly is that
7 they're continuing to pursue these claims under the state
8 law action.

9 THE COURT: He is not pursuing her for any money.
10 He said he's going to amend the complaint and I'll have
11 that in any order approving his employment. They're not
12 going to go after any money that was transferred without
13 getting an asset -- any monies that were transferred from
14 Girardi Keese to Mrs. Girardi, period. There's no mention
15 in there whether there's assets to the estate or not. This
16 is money that was transferred from Girardi Keese to her,
17 period.

18 MR. MASTAN: Okay.

19 THE COURT: So why don't you have a seat? That's
20 clear.

21 MR. MASTAN: But that's -- okay. So let's assume
22 that they dismiss the lawsuit as to Ms. Girardi in state
23 court, which is difficult for me because I do --

24 THE COURT: Well, let me stop you.

25 MR. MASTAN: -- understand -- yes.

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1 THE COURT: Counsel, why don't you have a seat?
2 I really -- I got to the point -- your point that you've
3 made. He's answered it to my satisfaction. I'm not going
4 to --

5 MR. MASTAN: Okay.

6 THE COURT: -- have any further because you
7 had -- you made a very good point and I've -- and I thought
8 I knew the answer because of the previous hearing, but you
9 weren't here so I want to make sure that on the record in
10 this case it made it clear. I thought it was clear. It
11 really is clear.

12 So, counsel, why don't you come back? Maybe it
13 was the other -- the previous argument as well as conflict.

14 MS. WANG EKVALL: The claims, Your Honor, as I
15 indicated earlier, Your Honor, as the Trustee's general
16 bankruptcy counsel, my firm will be evaluating and
17 revealing and pursuing any objections to claims including
18 claims of the law firm Finn/Sheldon if it's appropriate to
19 do so. We haven't gotten to that phase of the case yet.
20 We don't even have schedules filed and we don't have a
21 claims bar date yet, but at some point --

22 THE COURT: That's quite -- I think it was
23 sometime next year.

24 MS. WANG EKVALL: Some point down the road, Your
25 Honor.

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1 THE COURT: Well, because it's so -- this is so
2 complicated for everybody's sake, for claimant's sake, for
3 every -- everybody's sake. That's why we put off the
4 claims bar date to give you time to literally figure out
5 what's going on in the case.

6 MS. WANG EKVALL: So we will -- there will be a
7 point in time in this case when claims review and analysis
8 will be necessary. And when that time comes it will be my
9 firm that will be handling it, not Mr. Richards given the
10 very limited scope of his employment.

11 THE COURT: All right. Thank you.

12 No, no. It's not going to -- nothing furth --
13 that's why I prefer being in person. I can see about
14 the -- no, I am satisfied that there is no -- there is no
15 conflict and to the extent of any claim clearly that the
16 Trustee will be involved.

17 And I appreciate again this one point. I thought
18 I knew the answer and I want to make it absolutely clear
19 that I thought I knew it, but I wanted Mr. Richards to
20 state it because he was involved in the previous hearing on
21 this remand. We made it quite clear because the issue did
22 come up. So no and that -- what I would have you -- I will
23 approve the -- I will approve the application, but I would
24 like to have it in the order, this last point that we were
25 talking about specifically that Mr. Richards made the

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1 representation that essentially that -- that they're not
2 going to be suing any claim -- any of the funds that were
3 transferred from -- they may have claimed later on the
4 estate, but as far as -- they're not -- in the state court
5 action that they're not -- they're going to amend the
6 complaint and -- as far as at least Mrs. Girardi is
7 concerned, and they're not going to be going after her at
8 all for any transfers from Girardi Keese to -- to
9 Mrs. Girardi.

10 MR. MASTAN: May I ask you one clarification,
11 Your Honor?

12 THE COURT: Yes.

13 MR. MASTAN: To be clear, is that a release of
14 the claims that are asserted in the complaint?

15 THE COURT: No. Well --

16 MR. MASTAN: So we can bring it back later?
17 That's the point --

18 THE COURT: Well, the -- well --

19 MR. MASTAN: That's the clarification.

20 THE COURT: I'm not going to worry about it.
21 That would be suicidal. They're not going to have to --
22 this agreement they don't have to -- after they go through
23 here they're not going to -- I don't think they have to
24 waive anything. They're not -- the estate is -- that's
25 what he's being hired for. They're going to go after her.

Page

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1 I'm not going to -- we could be here all -- forever --
2 hypothe -- I'm not going to ask them to waive any rights.
3 But as far as what they're -- the complaint will be
4 amended, it's not going to include any claim to specific
5 funds from Girardi Keese to Mrs. Girardi. So that's clear
6 enough.

7 What happens in the future, we could be here
8 for -- we have bright minds in here. We could figure out
9 all sorts of possibilities, but I am satisfied that --
10 first of all, I had no idea whether they will -- after the
11 investigation the Trustee will pursue it at all. I have no
12 idea, but I am -- so that's -- so anyway, so I am going
13 to -- so thank you very much.

14 So just that one portion in there just to make it
15 clear, it's not talking about assets of the estate. It
16 will be transfers of funds because any transfer claim to
17 any -- any litigation based on any claim of the Girardi
18 Keese case based on transfer of funds from Girardi Keese to
19 Mrs. Girardi and that -- they are not going to pursue in
20 the state court, period. I'm not going to ask them to
21 waive any -- who knows in the future, but that's -- but
22 right now that's not going to happen.

23 And so if anything if they later do something,
24 you can always come back and complain about it, but it
25 seems pretty clear to me.

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1 MS. WANG EKVALL: I'll make sure to circulate the
2 order, Your Honor.

3 THE COURT: Okay. So let me ask. This is the
4 only thing. Do we have -- excuse me?

5 THE CLERK: (Indiscernible)

6 THE COURT: Yeah, in the future as you can see,
7 you can see where we care about everybody. We're pretty
8 careful here, but I -- it's so much different, the
9 different dynamic, as far as I am concerned, about
10 physically being here. You just can't compare. You do the
11 best you can. I understand it's necessary, but we will
12 set -- we will still continue certain status conference. A
13 few things on Zoom. But ultimately my desire is to get the
14 vast majority back in person like today. In fact, this
15 afternoon I have a big hearing again in person.

16 So thank you very much and I appreciate and I'm
17 glad -- my staff, they got you -- you can take whatever
18 water you were offered if you want, I guess. No one else
19 is going to use it, so take the bottle with you and I
20 will -- if you'll prepare that order I will --

21 MS. WANG EKVALL: Thank you, Your Honor. On an
22 unrelated note within the same case if I may with the
23 Court's indulgence.

24 THE COURT: Sure, all right.

25 MS. WANG EKVALL: We -- the estate has to move

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1 out of the 1122 --

2 THE COURT: Oh, yeah. I was going to ask about
3 that --

4 MS. WANG EKVALL: -- Wilshire building.

5 THE COURT: -- and I forgot.

6 MS. WANG EKVALL: And we uploaded an abandonment
7 order this morning. The movers are coming later this week,
8 so we're hoping that the Court -- it was a negative notice
9 motion. Nobody opposed and --

10 THE COURT: Nobody opposed it.

11 MS. WANG EKVALL: -- we submitted a declaration.

12 THE COURT: That -- I think it's be unlikely
13 anybody would, but -- so where are you move --

14 MS. WANG EKVALL: Just --

15 THE COURT: So you're -- where are you going?
16 Where --

17 MS. WANG EKVALL: We're --

18 THE COURT: There are two buildings. Move from
19 one to the other, but ultimately out of the second one
20 or --

21 MS. WANG EKVALL: Well, it's a combination. For
22 now we're moving things that are still necessary into the
23 other building, 1126 Wilshire, but we're also destroying
24 some of the assets of no value, some of the -- there were
25 just thousands of magazines with Tom Joriety's (phonetic)

Page

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1 pictures on them that don't think they have --

2 THE COURT: I say --

3 MS. WANG EKVALL: -- realizable value and --

4 THE COURT: He has many more, no doubt, than most
5 people, but --

6 MS. WANG EKVALL: Yes.

7 THE COURT: -- in any case I -- okay.

8 MS. WANG EKVALL: So if the --

9 THE COURT: Yeah, I'll --

10 MS. WANG EKVALL: So just wanted to bring it to
11 the Court's attention.

12 THE COURT: -- take a look at it and I'm sure
13 I'll sign it, so --

14 MS. WANG EKVALL: Thank you, Your Honor.

15 THE COURT: Okay. Thank you very much.

16 MR. MASTAN: Thank you, Your Honor.

17 THE COURT: All right. Thank you.

18 MR. MASTAN: Ms. Fortier (phonetic), you are a
19 lifesaver, thank you. Appreciate it.

20 THE COURT: Thank you. All right.

21 (End at 10:41 a.m.)

22 * * * * *

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Page

44

1 I certify that the foregoing is a correct
2 transcript from the electronic sound recording of the
3 proceedings in the above-entitled matter.

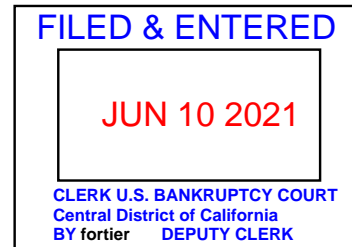
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6 *Ruth Ann Hager*

7 _____ Date: 6/22/2021

8 RUTH ANN HAGER, C.E.T.**D-641
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Attorneys for Elissa D. Miller, Chapter 7
Trustee

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re

GIRARDI KEESE,

Debtor.

Case No. 2:20-bk-21022-BR

Chapter 7

**ORDER GRANTING CHAPTER 7
TRUSTEE'S APPLICATION TO EMPLOY
THE LAW OFFICES OF RONALD
RICHARDS & ASSOCIATES, A.P.C. AS
SPECIAL LITIGATION COUNSEL**

Date: June 8, 2021
Time: 10:00 a.m.
Ctvm.: 1668
255 E. Temple Street
Los Angeles, California 90012

On June 8, 2021, at 10:00 a.m., the above-captioned Court held a hearing on the
*Chapter 7 Trustee's Application to Employ the Law Offices of Ronald Richards &
Associates, A.P.C. as Special Litigation Counsel* [Docket No. 318] (the "Application") filed
by Elissa D. Miller, in her capacity as Chapter 7 Trustee (the "Trustee") for the
bankruptcy estate of Girardi Keese. Appearances were as noted on the Court's record.

Having considered the Application and the pleadings, declarations, and exhibits
filed in support thereof and response thereto, and the statements and arguments of
counsel on the record at the hearing on the Application, finding that notice and service of

SMILEY WANG-EKVALL, LLP
3200 Park Center Drive, Suite 250
Costa Mesa, California 92626
Tel 714 445-1000 • Fax 714 445-1002

1 the Application were proper and that no further notice be given, and finding good cause
2 for the relief requested in the Application,

3 **IT IS ORDERED** that, based on the representation by the Richards Firm¹ that the
4 Plaintiffs in the Sheldon Litigation have agreed to and will not pursue any claims against
5 Erika Girardi involving any transfers from the Debtor to Erika Girardi, the Trustee is
6 authorized to employ the Law Offices of Ronald Richards & Associates, A.P.C., as her
7 special litigation counsel on the terms and conditions set forth in the Application.

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14 Approved as to Form:

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16 DINSMORE & SHOHL LLP
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18 Signature attached

19 PETER J. MASTAN
20 Attorneys for Erika Girardi
21

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23
24 Date: June 10, 2021



25 Barry Russell
26 United States Bankruptcy Judge
27

28 ¹ Capitalized terms shall have the same meaning and usage as in the Motion.

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Attorneys for Elissa D. Miller, Chapter 7
Trustee

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re
GIRARDI KEESE,

Debtor.

Case No. 2:20-bk-21022-BR
Chapter 7

**ORDER GRANTING CHAPTER 7
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7 special litigation counsel on the terms and conditions set forth in the Application.

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20 Approved as to Form:

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22 DINSMORE & SHOHL LLP

23 
24 _____
25 PETER J. MASTAN
26 Attorneys for Erika Girardi
27
28

¹ Capitalized terms shall have the same meaning and usage as in the Motion.

EXHIBIT "3"

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Attorneys for Plaintiffs

UNITED STATES BANKRUPTCY COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

In re:

GIRARDI KEESE,

Debtor.

LAW OFFICES OF PHILIP R. SHELDON,
APC, a California professional corporation,
PHILIP R. SHELDON, an individual, LAW
OFFICES OF ROBERT P. FINN, a California
sole proprietorship, and ROBERT P. FINN, an
individual,

Plaintiffs,

v.

THOMAS V. GIRARDI, an individual;
GIRARDI & KEESE, a California law firm;
ERIKA GIRARDI a/k/a ERIKA JAYNE, an
individual, EJ GLOBAL, LLC, a California
limited liability company, 1126 WILSHIRE
PARTNERSHIP, a California general
partnership, GIRARDI FINANCIAL, INC., a
Nevada corporation, DAVID LIRA, an
individual, ROBERT FINNERTY, an
individual, and DOES 1-100, inclusive,

Defendants.

FILED & ENTERED

MAY 13 2021

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY fortier DEPUTY CLERK

CHAPTER 7

Hon. Barry Russell

CASE NO.: 2:20-bk-21022-BR

ADV. NO.: 2:21-ap-01039-BR

**ORDER GRANTING PLAINTIFFS'
MOTION FOR REMAND**

DATE: May 11, 2021

TIME: 2:00 p.m.

CTRM: by zoomgov.com

MEETING ID: 161 713 6367

PASSWORD: 123456

ORDER GRANTING PLAINTIFFS' MOTON FOR REMAND

1 The Court, having considered Plaintiffs Law Offices of Philip R. Sheldon, Philip R.
2 Sheldon, Law Offices of Robert P. Finn, and Robert P. Finn's (collectively, "Plaintiffs")
3 motion for an order remanding to state court the action entitled *Law Offices of Philip R.*
4 *Sheldon, et al. v. Girardi, et al.*, Los Angeles Superior Court Case No. 20STCV47160 (the
5 "Removed Action"), any opposition regarding the same, for the reasons stated on the record
6 and for good cause appearing, hereby orders that Plaintiffs' Motion is GRANTED.

7 Counsel for Plaintiff also reaffirmed that Plaintiffs would not be proceeding on any
8 fraudulent transfer claims, including but not limited to the 6th Cause of Action in the First
9 Amended Complaint, and that fraudulent transfer claims belong to the bankruptcy estate of
10 Girardi Keese.

11 The Removed Action is hereby REMANDED to the Superior Court of the State of
12 California, County of Los Angeles forthwith.

13 **IT IS SO ORDERED.**

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24 Date: May 13, 2021



Barry Russell
United States Bankruptcy Judge

Spertus, Landes & Umhofer, LLP
1990 SOUTH BUNDY DR., SUITE 705
LOS ANGELES, CA 90025
TELEPHONE 310-826-4700; FACSIMILE 310-826-4711

1 All parties hereby agree to the foregoing order.

2 Dated: May 12, 2021

SMILEY WANG-EKVALL

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4

/s Tim Evanston

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Tim Evanston
Attorney for the Trustee

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8

Dated: May 12, 2021

SPERTUS, LANDES & UMHOFFER LLP

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/s Ezra Landes

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Ezra Landes
Attorney for Plaintiffs

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Dated: May 12, 2021

ROBIE & MATTHAI

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/s Kyle Kveton

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Kyle Kveton
Attorney for Defendant David Lira

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 3200 Park Center Drive, Suite 250, Costa Mesa, CA 92626.

A true and correct copy of the foregoing document entitled (*specify*): **OPPOSITION TO MOTION FOR RECONSIDERATION OF ORDER GRANTING CHAPTER 7 TRUSTEE'S APPLICATION TO EMPLOY THE LAW OFFICES OF RONALD RICHARDS & ASSOCIATES, A.P.C. AS SPECIAL LITIGATION COUNSEL; DECLARATIONS OF ELISSA D. MILLER AND RONALD RICHARDS IN SUPPORT** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) July 16, 2021 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL:

On (*date*) July 16, 2021, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Barry Russell
U.S. Bankruptcy Court
Roybal Federal Building
255 E. Temple Street, Suite 1660
Los Angeles, CA 90012

☐ Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

July 16, 2021

Date

Gabriela Gomez-Cruz

Printed Name

/s/ Gabriela Gomez-Cruz

Signature

TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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